

UNITED STATES, COMMONWEALTH OF MASSACHUSETTS,  
AND CONNECTICUT V. GENERAL ELECTRIC COMPANY (D. MASS.)  
CONSENT DECREE

APPENDIX N

DRAFT GRANT OF CONSERVATION EASEMENT AND RESTRICTION  
FOR UNKAMET BROOK WETLANDS AREA  
M.G.L. c. 184, §§ 31-33

EPA Site Name: GE-Pittsfield Housatonic River Site  
DEP Site Name: GE Pittsfield Disposal Sites  
DEP Release Tracking No(s).: [insert RTN(s) for property;

This GRANT OF CONSERVATION RESTRICTION (the "Grant") is made as of this \_\_\_\_ day of \_\_\_\_\_, 1999, by General Electric Company, of \_\_\_\_\_, \_\_\_\_\_ county, Massachusetts ("Grantor" or "GE").

W I T N E S S E T H

WHEREAS, Grantor is the owner in fee simple of a certain parcel of land located in Pittsfield, Berkshire County, Massachusetts;

WHEREAS, said parcel of land, known and/or numbered as \_\_\_\_\_ which is more particularly bounded and described in Exhibit A attached hereto and made a part hereof (the "Property"), is subject to this Grant. The Property is shown on a plan [recorded and/or registered herewith] [recorded and/or registered in \_\_\_\_\_] \_\_\_\_\_ Berkshire County Middle District Registry of Deeds/Land Registration Office in Plan Book \_\_\_\_\_, Plan \_\_\_\_\_, or as Land Court Plan No. \_\_\_\_\_];

WHEREAS, portions of the Property, referred to as the "Protected Area," bounded and described as Exhibit B, are subject to covenants, restrictions, easements and other rights and obligations under this Grant, the Protected Area being shown on sheet number(s) \_\_\_\_ of a plan consisting of \_\_\_\_ sheets, entitled "\_\_\_\_\_" prepared by \_\_\_\_\_ M a s s a c h u s e t t s , d a t e d \_\_\_\_ , and recorded with the Berkshire County Registry of Deeds on \_\_\_\_\_, at Plan No. \_\_\_\_\_ Document No. \_\_\_\_\_, said sheet(s) being referred to as the "Plan of Protected Area."

WHEREAS, the Secretary of the United States Department of the

interior; the Secretary of the United States Department of Commerce acting by and through its National Oceanic and Atmospheric Administration, and the Massachusetts Secretary of Environmental Affairs (collectively the "Trustees") are vested with authority to file claims to recover natural resource damages pursuant to 42 U.S.C. § 9607 and, for the Massachusetts Secretary of Environmental Affairs, M.G.L. c. 21E § 5;

WHEREAS, the Property is located within a site, known as the Pittsfield/Housatonic River Site ("the Site"), which has been identified by the United States Environmental Protection Agency ("EPA") and the Massachusetts Department of Environmental Protection ("DEP") as containing hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), and oil and/or hazardous material, as defined in M.G.L. c. 21E, released from the GE Facility in Pittsfield;

WHEREAS, GE, EPA, DEP, the Trustees, and other parties have executed a Consent Decree entered by the United States District Court for the District of Massachusetts in United States of America et al. v. General Electric Company (Civil Action No. \_\_\_\_\_) on \_\_\_\_\_ (the "Consent Decree"), under which GE agreed to perform certain response actions and other activities at the Site;

WHEREAS, in the Consent Decree GE agreed to impose on certain GE-owned properties at the Site, including the Property, land and water use restrictions through Grants of Environmental Restrictions and Easements, which will be recorded and/or registered with the Pittsfield Registry of Deeds;

WHEREAS, GE further agreed in the Consent Decree to undertake certain natural resource restoration and enhancement activities at a number of areas at the Site, including the placement of a conservation easement on the Protected Area of the Property;

WHEREAS, the Trustees desire that the Protected Area remain undeveloped and contribute to support a healthy ecosystem in the Housatonic River environment in perpetuity;

NOW, THEREFORE, Grantor, acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the General Laws of Massachusetts, grants, for consideration the receipt and sufficiency of which is hereby acknowledged, with quitclaim covenants, to the Commonwealth of Massachusetts, acting by and through its Department of Environmental Management located at 100 Cambridge Street, Boston, Massachusetts,

and its successors and permitted assigns ("Grantee"), in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on the Protected Area, located in the City of Pittsfield, Massachusetts, constituting approximately ten acres, said Protected Area being described in Exhibit B attached.

Said Conservation Restriction is subject to the following terms and conditions:

1. Purpose

The purpose of this restriction is to retain the Protected Area in its natural, scenic, and open condition; to protect and conserve the Protected Area as a headwater stream marsh; and, to preserve the Protected Area as habitat for those species known to occur in headwater stream marsh ecosystems in Berkshire County, Massachusetts.

2. Prohibited Acts and Uses

Subject to the exceptions set forth in Paragraph 3 below, the following acts and uses are prohibited on the Protected Area:

a. Constructing or placing of any type of structure, including but not limited to any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, advertising display or sign, antenna, utility pole, tower, new utility conduit or line on, above or under the Protected Area;

b. Mining, excavating, dredging or removing from the Protected Area of soil, loam, peat, gravel, sand, rock, or other mineral resource or natural deposit to an extent that would impair the continued retention of the Protected Area as a headwater stream marsh;

c. Actively placing, filling, storing, or dumping on the Protected Area of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, or waste or the installation of underground storage tanks;

d. Cutting, removing or otherwise destroying trees, grasses or other vegetation;

e. The subdivision of the Protected Area;

f. Use of motorized or power-driven vehicles of any kind, but

excepting emergency vehicles such as those used by police, fire fighters or other governmental agents carrying out their lawful duties; and

g. Other activities within, or use of, the Protected Area that would materially impair the continued retention of the Protected Area as a marsh.

### 3. Exceptions to Prohibited Acts and Uses

The restrictions and prohibitions set forth in Paragraph 2 shall not apply to, prohibit, or restrict the following acts and uses in the Protected Area:

a. Any response actions undertaken by EPA or DEP or their agents, representatives, contractors, subcontractors or employees pursuant to CERCLA, M.G.L. c. 21E, or the Consent Decree, or undertaken by GE or its agents, representatives, contractors, subcontractors or employees pursuant to the Consent Decree.

b. Any natural resource restoration work undertaken by the Trustees or their agents, representatives, contractors, subcontractors or employees pursuant to CERCLA, M.G.L. c. 21E, or the Consent Decree, or undertaken by GE or its agents, representatives, contractors, subcontractors or employees pursuant to the Consent Decree;

c. Activities necessary to respond to an emergency at or near the Protected Area, such as a fire, flood, or other situation that poses a significant danger to public health, welfare, or the environment;

d. The destruction, removal, or cutting of trees or other vegetation as necessary to implement disease prevention measures, to eliminate a threat to public safety, or to remove nuisance species;

e. Consistent with appropriate horticultural practices and with the continued retention of the Protected Area as a marsh, the destruction, removal, or cutting of trees or other vegetation as part of maintenance of such trees or vegetation;

f. With the consent of the Grantee, the placement of sight-pervious fences that would not interfere with the continued retention of the Protected Area as a marsh;

g. The placement of signs by the Grantee or, with the consent

of the Grantee, by the Grantor, to identify the Grantee as the holder of this Conservation Restriction, to educate the public about the conservation values protected, or to set forth limitations relating to public access;

h. With the consent of the Grantee, the sampling of soil, water, or wildlife, or the construction of temporary structures, incident to the study of conservation of the Protected Area.

i. Any other activities or use not otherwise prohibited by Paragraph 2.

#### 4. Legal Remedies of the Grantee

The rights hereby granted shall include the right to enforce this restriction by the Grantee through appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations.

#### 5. Access

This restriction gives to the Grantee, the Trustees and their respective agents and representatives, the right to enter upon the Protected Area in a reasonable manner and at reasonable times, upon prior notice to the Grantor, for the purpose of inspecting the Protected Area to determine compliance with the terms of this restriction, to enforce the terms of the restriction, and to remedy any violation of the restriction.

#### 6. Extinguishment

##### a. Grantee's Receipt of Property Right

The Grantor and the Grantee agree that the grant of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this restriction determined at the time of the grant bears to the value of the unrestricted Protected Area at that time.

##### b. Value of Grantee's Property Right

Such proportionate value of the Grantee's property right shall remain constant.

c. Right of Grantee to Recover Proportional Value at Disposition'

If any occurrence ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then the Grantee on a subsequent sale, exchange or involuntary conversion of the Protected Area, shall be entitled to a portion of the proceeds equal to such proportionate value, subject, however, to any applicable law which expressly provides for a different disposition of proceeds.

d. Grantor/Grantee Cooperation Regarding Public Action  
whenever all or any part of the Protected Area or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action.

e. Allocation of Expenses upon Disposition  
All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in shares equal to such proportionate value.

f. Continuing Trust of Grantee's Share of Proceeds of Conservation Restriction Disposition

The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes of this grant.

## 7. Bindina Effect, Execution of Instruments and Release

### a. Running of the Burden

The burdens of this Conservation Restriction shall run with the Protected Area in perpetuity, and shall be enforceable *against the* Grantor, its successors and assigns, holding any interest in the Protected Area.

### b. Execution of Instruments

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The Grantor and its successors and assigns agree to execute any such instrument upon request.

### c. Release

This restriction may only be released, in whole-or in part, by the Grantee pursuant to its disposition policies and in accordance with Article 97 of the Amendments to the Massachusetts Constitution, section 32 of Chapter 184 and sections 61 through 62H of Chapter 30 of the General Laws and 301 CMR 11.00, if applicable.

### 3. Assignment

The benefits of this Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances from time to time: (1) as a condition of any assignment, Grantee requires that the purposes of this Conservation Restriction continue to be carried out and enforced, (2) the assignee is a government entity, with at least statewide jurisdiction, that has Statutory authority to hold property interests and to administer or enforce property restrictions such as conservation restrictions, on behalf of the Commonwealth of Massachusetts or the United States, and (3) all necessary approvals are obtained in accordance with Article 97 of the Amendments to the Massachusetts Constitution, section 32 of chapter 184 and sections 61 through 62H of chapter 30 of the General Laws and 301 CMR 11.00, if applicable.

### 9. Subsequent Transfers

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction on any deed or other legal instrument, including a leasehold, by which Grantor divests itself of any interest in all or a portion of the Protected Area. Grantor shall notify Grantee in writing at least thirty (30) days before it divests itself of any interest in the Protected Area. Said notice shall include the name and address of the transferee.

### 10. Amendment

If circumstances arise under which amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this restriction, provided that no amendment may be made that will violate the provisions of Article 97 of the Amendments to the Massachusetts Constitution. Any permissible amendments shall be recorded with the Berkshire County Middle District Registry of Deeds in Pittsfield, Massachusetts.

### 11. Estoppel Certificate

Upon a request by Grantor, the Grantee shall within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

### 12. Effective Date

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws of Massachusetts have been obtained, and it has been recorded, or if registered land, it has been registered.

13. Miscellaneous

a. Severability Clause

If any provision of this restriction shall to any extent be held invalid, the reminder shall not be affected.

b. Pre-existing Rights of the Public

Approval of this Conservation Restriction pursuant to section 32 of Chapter 184 of the General Laws by the secretary of Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Protected Area, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

c. Controlling Law

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

d. Captions

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

14. Recordation

The Grantor shall record this instrument in timely fashion in the Berkshire County Middle District Registry of Deeds.

Executed under seal this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_



COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, SS. \_\_\_\_\_, 1999

Then personally appeared the above-named representative of General Electric Company and acknowledged the foregoing instrument to be its free act and deed, before me.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

The Massachusetts Department of  
Environmental Management

By: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss. \_\_\_\_\_, 1999

Then personally appeared the above-named representative of General Electric Company and acknowledged the foregoing instrument to be its free act and deed, before me.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

APPROVAL BY SECRETARY OF THE EXECUTIVE OFFICE OF ENVIRONMENTAL  
AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Massachusetts Department of Environmental Management has been approved in the public interest pursuant to M.G.L. Ch. 184, §32.

Date: \_\_\_\_\_

\_\_\_\_\_  
Secretary of Environmental  
Affairs

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss. \_\_\_\_\_, 1999

Then personally appeared the above-named representative of General Electric Company and acknowledged the foregoing instrument to be its free act and deed, before me.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

EXHIBIT A  
[the Property]

Exhibit B  
[the Protected Area]